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Supreme Court, U.S.
FILED
AUG 26 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-33

In The
Supreme Court of the United States
October Term, 1987

IN THE MATTER OF
WIEDEMANN & FRANSEN, A.P.L.C.,
Petitioner.

VERSUS

HOLLYWOOD MARINE, INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT HOLLYWOOD MARINE, INC. IN OPPOSITION

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I. QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Fifth Circuit was correct in upholding the District Court's dismissal of petitioner's complaint for failure to state a cause of action.

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IV. REPORT OF OPINIONS DELIVERED IN COURTS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit in this matter has been published in the West Reported System as *Wiedemann & Fransen, A.P.L.C. v. Hollywood Marine, Inc.*, 811 F.2d 864 (5th Cir. 1987).

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V. STATEMENT OF JURISDICTION

The jurisdiction of the Court arises under 28 U.S.C. Section 1254. Petitioner's claim was originally dismissed by the Honorable Martin L.C. Feldman of the United States District Court for the Eastern District of Louisiana on February 20, 1986. The decision of His Honor below was upheld by the United States Court of Appeals for the Fifth Circuit by a unanimous opinion rendered on February 23, 1987. Petitioner's request for Rehearing En Banc was subsequently denied on March 27, 1987. Rule 17(a) of the Rules of the Supreme Court is not implicated in this proceeding.

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VI. STATEMENT OF STATUTES INVOLVED

This matter involves the interpretation of the General Maritime Law of the United States of America.

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VII. STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in Courts Below.

The original Complaint of the petitioner, Wiedemann & Fransen, A.P.L.C., was filed on December 11, 1985 in the United States District Court for the Eastern District of Louisiana. A short while later, Hollywood Marine, Inc. filed a motion to dismiss the complaint for failure to state a cause of action. On February 20, 1987, the Honorable Martin L.C. Feldman, Judge for the United States District Court for the Eastern District of Louisiana, rendered judgment dismissing petitioner's complaint, which judgment was subsequently entered on February 24, 1986.

Petitioner appealed to the United States Court of Appeals for the Fifth Circuit. On February 23, 1987, the Court of Appeals upheld the District Court's decision dismissing petitioner's claim. Petitioner then filed for Rehearing En Banc which was denied on March 27, 1987.

B. Statement of the Facts.

For an understanding of the instant Petition for Writ of Certiorari it is necessary to set forth events occurring prior to the filing of petitioner's federal court complaint.

Mr. Randy Lee Neely, an employee of Hollywood Marine, Inc., allegedly sustained injuries on May 8, 1985 during the course of his employment. Mr. Neely engaged the law firm of Wiedmann & Fransen as legal counsel and executed a contingency fee contract with that firm on May 13, 1985. Wiedemann & Fransen, in turn, filed a

Jones Act suit on Mr. Neely's behalf in the Civil District Court for the Parish of Orleans, State of Louisiana.

Mr. Neely soon became dissatisfied with his legal representation as his attorney refused to return his phone calls. Further, after long thought and discussion with family members, Mr. Neely concluded that he did not wish to proceed with his suit and desired an amicable settlement with Hollywood. Thereafter, he contacted Hollywood directly, discharged his attorney and settled his injury claim directly with Hollywood.

Following its dismissal by Mr. Neely and after the confection of the settlement between Hollywood and Mr. Neely, petitioner Wiedemann & Fransen filed the instant suit against respondent Hollywood in the United States District Court for the Eastern District of Louisiana asserting a claim for intentional tortuous interference with contract rights. Wiedemann & Fransen's federal court complaint alleges that respondent settled Neely's state court personal injury suit directly with Neely with the deliberate intent to tortuously interfere with petitioner's contractual rights under the contingency fee contract.

Taking the allegations of petitioner's complaint as true, as required in a motion to dismiss for failure to state a cause of action, the District Court concluded that Louisiana law, not maritime law, was applicable in determining what rights, if any, Wiedemann & Fransen had against Hollywood. Because a claim for intentional tortuous interference with contract is not recognized under Louisiana law, the trial court correctly dismissed petitioner's complaint.

Petitioner appealed, contending federal maritime law applied instead of the law of Louisiana, but the Fifth

Circuit correctly affirmed the District Court's holding, concluding that petitioner did not allege a maritime tort. In consequence, the general maritime law was inapplicable to petitioner's claim and the cause of action was dismissed as one not recognized under Louisiana law.

The determination of whether petitioner has stated a claim upon which relief may be granted is confined to the well pleaded allegations of the complaint. *See Campbell v. Wells Fargo Bank N.A.*, 781 F.2d 440 (5 Cir.), *cert. denied*, — U.S. —, 106 S.Ct. 2279, 90 L.Ed.2d 721 (1986).

VIII. SUMMARY OF ARGUMENT

THE FIFTH CIRCUIT COURT OF APPEALS WAS CORRECT IN AFFIRMING THE TRIAL COURT'S ORDER DISMISSING PETITIONER'S COMPLAINT BECAUSE THE COMPLAINT FAILS TO SET FORTH A MARITIME TORT INVOKING THE APPLICATION OF THE GENERAL MARITIME LAW.

IX. ARGUMENT

A. The Court of Appeals was correct in holding that an attorney's claim for intentional tortuous interference with a contingency fee contract is not a maritime tort.

Petitioner concedes in its Petition for Writ of Certiorari that its complaint fails to allege a maritime tort under the pure "locality" test of *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 248, 93 S.Ct. 493, 34

L.Ed.2d 454 (1972) but maintains that a strict locality test should not be applied. It asserts instead that the alleged tort emanated somehow from plaintiff Neely's Jones Act suit and is, therefore, a maritime tort.

Contrary to petitioner's assertion, however, the Fifth Circuit did not apply a strict "locality" test in assessing the nature of the alleged tort. Instead, it recognized that a tort may be maritime in nature if its impact can be felt on the navigable waters. Indeed at footnote 1 of its opinion, the Court discusses the First Circuit's decision in *Carroll v. Protection Maritime Insurance Co. Ltd.*, 512 F.2d 4, 8 (1st Cir. 1975) wherein admiralty jurisdiction was invoked in an action asserted by commercial fishermen against maritime protection and indemnity insurers. There, the plaintiffs claimed that the insurers' black-listing practices had interfered with their employment contracts with their respective employers. The *Carroll* court concluded that the employers' black-listing practices had impact which was felt at sea, *id* at p.8, and concluded that the plaintiffs' complaints stated causes of action in admiralty.

The Court of Appeals, in the instant case, recognized the "impact" exception to the strict locality rule and stated with respect to petitioner's cause of action herein: "We cannot see how any impact of the alleged tort could have been felt on the navigable waters. Consequently, the alleged tort is not a maritime tort." (See Petitioner's Appendix at A-6, 7) The Court of Appeals was correct in its conclusion that the wrong alleged by petitioner did not have impact on the navigable waters.

As recognized by the Court of Appeals, petitioner's tort is distinguishable from those alleged in *Carroll*. In

Carroll, the effect of the employers' black-listing practices was to prevent the return of plaintiffs to their employment on the navigable waters. The court there stated:

> So, in the case at bar, it can also be said that the impact of defendants' alleged actions, at least where existing employment was terminated, was felt in the operations of the affected vessels at sea. They not only have sailed without the black-listed plaintiffs but without the owners and officers of the affected vessels having exercised their unrestricted choice of crew members.

512 F.2d at p.8.

In the case at bar, petitioner is not a seaman who has been tortuously prevented from returning to the seas. Instead, petitioner is a law firm located in downtown New Orleans which will continue to conduct its land-based and maritime law practice, as usual, regardless of the outcome of this case. Any claimed effect on the navigable waters is tenuous indeed.

Petitioner cites the decisions of *Smith v. Atlas Offshore Boat Service, Inc.,* 653 F.2d 1057 (5th Cir. 1981) and *Parker v. Gulf City Fisheries, Inc.,* 803 F.2d 828 (5th Cir. 1986) for the proposition that a strict locality test is not applied in all cases to assess the existence of maritime torts. These cases, however, merely apply the "impact" exception recognized in *Carroll.* The cases of *Carollo v. Global Cape Ann Corp.,* 627 F.2d 1507 (D.Mass. 1986) and *Fitzgerald v. A.L. Burbank & Co.* 451 F.2d 670 (2d Cir. 1971) are clearly inapposite. The former addresses the wife's claim for loss of consortium, which claim arises concurrent with the maritime tort to the husband. The latter merely recognizes that the Jones Act employer's

negligence may be extended to include the inadequate provision of medical assistance. The tort alleged by petitioner is not one arising concurrent with the alleged injury to Jones Act plaintiff Neely, nor is it a violation of a continuing duty owed by the employer pursuant to the Jones Act. Instead, it is a separate and distinct tort alleged to have occurred to a law firm several months after the claimed injury to Mr. Neely.

B. A uniform maritime rule is unnecessary.

Petitioner's attempt to have the reasoning and holding of *Greenberg v. Panama Transport Company,* 185 F.Supp. 320 (D.Mass 1960), *rev'd,* 290 F.2d 125 (1st Cir. 1961) adopted in this case should be rejected. That decision, rendered by a Court without jurisdiction before this Court's pronouncement in *Executive Jet,* fails to address the primary issue before this Court, i.e., whether an alleged tort is a maritime tort. Respondent submits that the tort alleged in *Greenberg* would not pass muster as a maritime tort under the current jurisprudence.

Pleas for a uniform standard for tortuous interference with contract cases should be rejected. Respondent emphasises this Court's analysis in *Executive Jet* where it rejected expanding the admiralty jurisdiction, stating:

> "The power reserved to the states, under the Constitution, to provide for the determination of controversies in their courts may be restricted only by the action of Congress in conformity to the judiciary sections of the Constitution. . . . Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which [a federal] statute has defined."

409 U.S. 249, 272, 273, 93 S.Ct. 493, 34 L.Ed.2d 454. [Quoting *Healy v. Ratta,* 292 U.S. 263, 270, 54 S.Ct. 700, 78 L.Ed. 1248 (1938)].

Petitioner has not, and cannot, state a basis for requiring maritime uniformity in interference with contingency-fee contracts claims that would justify usurping state law legislation and jurisprudence in the area. Respondent notes that the contract regarding which petitioner sues is a creation of state law. See L.S.A.-R.S. 37:218; that petitioner filed Mr. Neely's Jones Act suit in state court; that petitioner filed its contingency fee contract in the state court proceeding in an effort to comply with L.S.A.-R.S. 37:218; and that petitioner is presently seeking to enforce its contractual rights pursuant to state law in the Louisiana state court system. Petitioner's "law shopping" efforts should be rejected.

X. CONCLUSION

The Court of Appeals was correct in affirming the District Court's dismissal of petitioner's complaint because the complaint fails to state a cause of action cognizable as a maritime tort under either a strict "locality" analysis or a "maritime impact" an lysis. There is no need to create a uniform maritime standard in tortuous interference with contract cases involving disgruntled attorneys especially where, as here, there is no impact on maritime law.

For the foregoing reasons, petitioner's Writ for Certiorari should be denied.

Respectfully submitted,

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